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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-664

VENTURA COUNTY,

Appellant,

v.

GULF OIL CORPORATION,

Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JURISDICTIONAL STATEMENT

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SUBJECT INDEX

		Page
Table of Citations		ii
Opinions Below		2
Jurisdiction		2
Questions Presented		3
Constitutional and Statutory Provisions		4
STATEMENT OF THE CASE		5
THE QUESTIONS ARE SUBSTANTIAL		13
I	THIS CASE PRESENTS SIGNIFICANT ISSUES OF BROAD NATIONAL INTEREST AND EFFECT.	13
II	THE DECISION BELOW IS INCORRECT.	18
CONCLUSION		30

TABLE OF CITATIONS

Cases	Page
Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Bd. (1942) 315 U.S. 740	19
City of New Orleans v. Dukes (1976) 427 U.S. 297	18
Doran v. Salem Inn, Inc. (1975) 422 U.S. 922	3
Dupuis v. Submarine Base Credit Union, Inc. (Conn. 1976) 365 A.2d 1093	22
Huron Portland Cement Co. v. Detroit (1960) 362 U.S. 440	19
International Paper Co. v. County of Siskiyou (9th Cir. 1974) 515 F.2d 285	22
Jones v. Rath Packing Co. (1977) 430 U.S. 519	20
Kleppe v. New Mexico (1976) 426 U.S. 529	4, 18
Mid-Northern Oil Co. v. Montana (1925) 268 U.S. 45	20, 21
New York State Department of Social Services v. Dublino (1973) 413 U.S. 405	19
Oklahoma Tax Commission v. Texas Co. (1949) 336 U.S. 342	21
Penn Dairies v. Milk Control Commission (1943) 318 U.S. 261	19
People v. Vendome Service, Inc. (N.Y. Ct. App. 1940) 31 N.E.2d 508	22
Rice v. Santa Fe Elevator Corp. (1947) 331 U.S. 218	19
San Diego Building Trades Council, Etc. v. Garmon (1959) 359 U.S. 236	26
Schwartz v. Texas (1952) 344 U.S. 199	19
State ex rel. Andrus v. Click (Ida. 1976) 554 P.2d 969	26
State ex rel. Cox v. Hibbard (Ore. Ct. App. 1977) 570 P.2d 1190	18
Texas Oil & Gas Corp. v. Phillips Petroleum Co. (W.D. Okla. 1967) 277 F.Supp. 366, aff'd (10th Cir. 1969) 406 F.2d 1303, cert. den. (1969) 396 U.S. 829	25
Village of Belle Terre v. Boraas (1974) 416 U.S. 1	15

	Page
Village of Euclid v. Ambler Realty Co. (1926) 272 U.S. 365	23
West v. United States (D.C. Cir. 1929) 30 F.2d 739	25
Wilson v. Cook (1946) 327 U.S. 474	20, 22
Youngstown Cart. Co. v. North Point Peninsula, Etc. (Md. Ct. App. 1975) 332 A.2d 718	22
Zicarelli v. New Jersey State Commission of Investigation (1971) 401 U.S. 933	4

U. S. Constitution

Article IV, § 3, clause 2	5
Article VI, clause 2	5

Statutes

United States Code

Title 16	
§§ 471 et seq.	20
§ 480	5, 20
§ 551a	5
Title 28	
§ 1254(2)	3
§ 1332	9
Title 30	
§§ 181 et seq. (Mineral Lands Leasing Act)	8, 11, 20
§ 187	5
§ 187b	8
§ 189	5, 20, 21, 22, 23, 25
Title 42	
§§ 4321 et seq. (National Environmental Policy Act of 1969)	29
§ 4371(b)(2)	30

Ordinances

Ventura County Ordinance Code

General Provisions	
§ 12	5
Division 8, Chapter 1	
Article 1	5
Article 25	5

	Page
Article 43	5
§§ 8163-3.1 et seq.	28
§ 8163-14.1	27
§ 8163-14.5	27

Texts and Periodicals

ALI-ABA CLE REVIEW, VOL. 10, NO. 29 (JULY 20, 1979) "Land Use Litigation: Critical Issues for Attorneys, Developers and Public Officials"	17
58 Cong. Rec. (Oct. 28, 1919)	11, 24
Engdahl, Some Observations on State and Federal Control of Natural Resources (1978) 15 HOUSTON L. REV. 1201	18
Engdahl, State and Federal Power Over Federal Property (1976) 18 ARIZ. L. REV. 283	4
INTERDEPARTMENTAL COMMITTEE FOR THE STUDY OF JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES, JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES, PART II: A TEXT OF THE LAW OF LEGISLATIVE JURISDICTION (U.S. Govt. Printing Office 1957)	9

	Page
Los Angeles Times September 7, 1979	15
NEWSWEEK, September 17, 1979	15
New York Times, June 10, 1979	15
PUBLIC LAND LAW REVIEW COMM'N, ONE THIRD OF THE NATION'S LAND (U. S. Govt. Printing Office 1970)	14
Reno Evening Gazette, July 30, 1979	15

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October Term, 1979

No. _____

VENTURA COUNTY,

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v.

GULF OIL CORPORATION,

Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JURISDICTIONAL STATEMENT

Appellant, Ventura County, appeals from the final judgment of the United States Court of Appeals for the Ninth Circuit, dated August 3, 1979, that Ventura County's zoning ordinances are preempted by federal law and cannot be

applied to the appellee, Gulf Oil Corporation, as the lessee of federally-owned national forest lands located within Ventura County, California.

Opinions Below

The opinion of the United States Court of Appeals for the Ninth Circuit, which appears in the appendix hereto, p. A-1, is reported at __ F.2d __.

The order of the United States District Court for the Central District of California, dated April 7, 1977, which was affirmed by the opinion of the Court of Appeals, is not reported. It is reprinted in the appendix hereto, p. A-21.

Jurisdiction

The judgment of the United States Court of Appeals for the Ninth Circuit, holding that Ventura County's zoning ordinances are preempted by federal law, was entered on August 3, 1979. [P. A-1, App.]

A notice of appeal to this Court was duly docketed in the United States

Court of Appeals for the Ninth Circuit on August 30, 1979. [P. A-44, App.] This appeal is being docketed in this Court within 90 days from the entry of the judgment below.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(2).[1/]

Questions Presented

1. Whether private entrepreneurs using federally-owned lands with federal permission are exempt from observing the requirements of local zoning ordinances.

1a. Whether Congress <u>can</u> preempt and clearly <u>has</u> preempted local governments' historic police power of zoning lands within their boundaries through its enactment of legislation authorizing the establishment of national forests and the leasing of federally-owned lands

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1/ "For the purposes of §1254(2), local ordinances are treated as state statutes." <u>Doran v. Salem Inn, Inc.</u> (1975) 422 U.S. 922, 927, fn.2.

therein to private parties for mineral development.[2/]

Constitutional and Statutory Provisions

The following constitutional and statutory provisions which are involved

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2/ The lower court has characterized the first part of this question (i.e., whether Congress can preempt under its Property Clause powers) as "frivolous" in light of the decision rendered in Kleppe v. New Mexico (1976) 426 U.S. 529 while this case was pending in the District Court. [P. A-7, App.] Assuming, arguendo, that the question of preemptive capability (vs. preemptive intent) could properly be considered closed despite the existence of strong criticism by recognized constitutional scholars and suggestions that the broad language of Kleppe be reexamined and limited by this Court (see, e.g., Engdahl, State and Federal Power Over Federal Property (1976) 18 ARIZ. L. REV. 283, 349-358 and 369-370), this Court obviously has the option of confining its review of the present case to the undeniably substantial questions of preemptive intent discussed hereinbelow should it choose to do so. Zicarelli v. New Jersey State Commission of Investigation (1971) 401 U.S. 933.

in this case are set forth beginning at p. A-46, App.:

U.S. CONST. art. IV, § 3, cl. 2

U.S. CONST. art. VI, cl. 2

16 U.S.C. § 480

16 U.S.C. § 551a

30 U.S.C. § 187

30 U.S.C. § 189

VENTURA COUNTY ORDINANCE CODE § 12

VENTURA COUNTY ORDINANCE CODE, DIV. 8, CHAP. 1,

ART. 1 (partial)

ART. 25 (partial)

ART. 43 (partial)

STATEMENT OF THE CASE

This is a suit brought by appellant Ventura County, California, ("Ventura County" hereinafter) against appellee Gulf Oil Corporation ("Gulf" hereinafter) to enforce the O-S (Open Space) zoning provisions of the Ventura County Ordinance Code on a parcel of federally-owned land. In this suit, Ventura

County has sought a declaration that land use activities conducted by private, nongovernmental individuals and organizations on federally-owned lands within the Los Padres National Forest in Ventura County must be conducted in compliance with the County's zoning ordinances. The County has also sought to enjoin Gulf from engaging in oil exploration and extraction activities on such lands until Gulf has requested and obtained an Open Space Use Permit for its activities in compliance with one of the requirements of such zoning provisions.

For many years, Ventura County has routinely sought and obtained compliance with its zoning ordinances by private parties engaging in land use activities on federally-owned lands within the Los Padres National Forest, and has issued numerous use permits specifically for oil exploration and extraction by private operators on federally-owned lands within this national forest. [PP. A-62 through A-72, App.]

Ventura County's zoning ordinances expressly permit "oil exploration and

extraction" activities on O-S (Open Space) zoned land following the formulation of conditions to protect adjacent properties and approval of an Open Space Use Permit by the Ventura County Planning Commission. The stated purpose of Ventura County's zoning ordinances is, inter alia, "to protect and promote the public health, safety, morals and welfare, and to provide the economic and social advantages which result from an orderly, planned use of land resources." [P. A-50, App.]

In 1974, the Bureau of Land Management of the United States Department of the Interior granted a lease of an O-S zoned 120 acre parcel located within the Los Padres National Forest to a private individual for purposes of oil exploration and development. The lease was subsequently assigned to Gulf. In early 1976, Gulf obtained the authorization of various federal agencies to drill on the leased lands, and commenced operations on

April 28, 1976.[3] Although advised by Ventura County that it must obtain an O-S Use Permit and comply with the conditions of the County's zoning ordinances in order to conduct drilling operations, Gulf refused to do so.

The Gulf drillsite is located just within (approximately 1200 feet inside the boundary of) the Los Padres National Forest. Numerous occupied private residences are located on private lands in the vicinity of the drillsite at distances ranging from approximately 1,000 feet to 7,000 feet from the Gulf drillsite.

The property upon which Gulf is drilling is land over which the federal government claims only a

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3/ The federal permissions which were granted enable, but do not require, Gulf to drill upon the subject federal lands. Like all lessees under the Mineral Lands Leasing Act [of 1920] (30 U.S.C. §§ 181 et seq.), Gulf enjoys the unfettered discretion "at any time [to] make and file in the appropriate land office a written relinquishment of all rights under . . . [its] lease . . . [which] relinquishment shall be effective as of the date of its filing . . . ." 30 U.S.C. § 187b.

proprietorial interest.[4]

On May 20, 1976, Ventura County brought suit in the California Superior Court seeking a declaratory judgment (that Gulf's activities are subject to Ventura County's zoning ordinances) and injunctive relief. The case was removed to the United States District Court following Gulf's invocation of diversity of citizenship jurisdiction under 28 U.S.C. § 1332, Ventura County being a California county and Gulf being a Pennsylvania corporation.

4/ Traditionally, the extent of federal jurisdiction over particular lands owned by the United States has been described by use of the following four terms: Exclusive legislative jurisdiction; concurrent legislative jurisdiction; partial legislative jurisdiction; proprietorial interest only. This last term ("proprietorial interest only") is "applied to those instances wherein the Federal Government has acquired some right or title to an area in a State but has not obtained any measure of the State's authority over the area." INTERDEPARTMENTAL COMMITTEE FOR THE STUDY OF JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES, JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES, PART II: A TEXT OF THE LAW OF LEGISLATIVE JURISDICTION, 7 (U.S. Govt. Printing Office 1957).

Ventura County's request for declaratory and injunctive relief was tried in the District Court upon a stipulated statement of facts (which provided, inter alia, for the Court's consideration in evidence of the affidavits reprinted at pp. A-62 through A-72, App.). No evidence was presented to show that Ventura County has ever refused to issue a use permit to a private individual or organization for oil and gas exploration on federally-owned lands within the national forest or has ever conditioned any of the numerous use permits which it has issued to such operations in the past so as to interfere with any federal activities or programs.

The District Court denied the relief requested by Ventura County without commenting on the undisputed history of successful application of the County's ordinances to private lessees of national forest lands. Although noting that California retains civil and criminal jurisdiction over lands within the Los Padres National Forest notwithstanding the fact that such lands may be owned by the federal government, the District

Court determined that "the County's [zoning] ordinances cannot constitutionally be applied" to Gulf due to an implied Congressional preemption of such ordinances through enactment of the Mineral Lands Leasing Act [of 1920], 30 U.S.C. §§ 181 et seq. (The District Court did not comment upon the legislative history of Congressional debates which had preceded passage of this Act. This history had been cited by Ventura County to demonstrate that Congress had no implicit or explicit intention to eliminate historic local police powers such as zoning by this enactment.)[5/]

Also without comment upon the past record of successful application of Ventura County's zoning ordinances within the national forest or the history of Congressional debate which preceded enactment of the Mineral Lands Leasing Act, the Court of Appeals affirmed the District Court, holding that Ventura

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5/ See House debates, 58 Cong. Rec. (Oct. 28, 1919) at pp. 7642 et seq.

County's "local ordinances . . . cannot be applied to Gulf." [P. A-7, App.)6/

6/ In its Reply Brief (p. 5) and in oral argument, Ventura County had urged that "[e]ndorsement of Gulf's arguments should have prompted, at most, a ruling that Gulf need not acquire a County permit, but that it is nonetheless subject to the local ordinance insofar as the ordinance sets forth general conditions of operation which must be observed by all oil companies in the County [in order to protect the health, safety and welfare of citizens on adjacent properties] (see Ventura County Ordinance Code §8163-14-§8163-14.11 . . .). Total elimination, not just of the power to require a conditional use permit, but of all regulatory jurisdiction, was clearly unwarranted." (Emphasis added.) The Court of Appeals makes no reference to this point in its opinion which broadly bars application of the County's zoning ordinances in their entirety.

THE QUESTIONS ARE SUBSTANTIAL

I

THIS CASE PRESENTS SIGNIFICANT ISSUES OF BROAD NATIONAL INTEREST AND EFFECT.

The question of the applicability of local zoning ordinances to private entrepreneurial activities on leased national forest lands is a novel and substantial one.7/ It has never been treated before by this Court.

Of the approximately 765 million acres (33.5% of the nation's land base) owned by the United States, the great majority (728 million acres--95%), including all national forests, are held by the federal government in a "proprietorial"8/ capacity only. Thus, aside from its impacts upon national forest lands (which are of themselves

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7/ As the District Court accurately observed, the zoning jurisdiction issue presented in this case "appears to be one of first impression." [P. A-35, App.]

8/ See fn. 4, supra, p. 9.

substantial),[9] this case will have significant implications for the future of federal-state relations in an area comprising almost one-third of this nation's total land mass.

A local jurisdiction's exercise of its historic police power of zoning in order to protect the "quality of life" of its citizens has been aptly described as perhaps "the most essential function performed by local government." (Dissenting opinion of Justice Marshall in

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9/ The nationwide significance of any decision regarding the extent of local zoning jurisdiction upon national forest lands alone becomes apparent when it is noted that there are approximately 187 million acres of federally-owned national forest lands (roughly one-fourth of all federal lands) scattered throughout 41 of the 50 states. See PUBLIC LAND LAW REVIEW COMM'N, ONE THIRD OF THE NATION'S LAND (U.S. Govt. Printing Office 1970) at p. 324 and pp. 327-330. Some 155 national forest reservations have been established throughout the United States, ranging from the Los Padres National Forest in California (which encompasses within its 1,965,000 acre expanse approximately one-half of the total 1.2 million acres of Ventura County's land base) to the Monongahela National Forest in West Virginia's Appalachian Mountains.

Village of Belle Terre v. Boraas (1974) 416 U.S. 1, 13.) The broad effects of the lower court's decision in this case, which is to simply discard such essential local police powers indiscriminately,[10] should not be allowed to stand absent a full and deliberate consideration of the issues presented by the Supreme Court of this land.[11]

10/ See fn. 6, supra, p. 12.

11/ In apparent reaction to a perceived federal insensitivity to local interests in the use of federally-owned lands, the State of Nevada last June initiated a widely publicized "sagebrush rebellion" through enactment of legislation claiming state title to 49 million acres of Nevada territory owned by the federal government. (See, e.g., newspaper accounts in New York Times, June 10, 1979, § 1, p. 50 ("Nevada Trying to Reclaim Land Held by Government Since 1864"), Reno Evening Gazette, July 30, 1979, p. 7 ("10 states endorse 'Sagebrush Rebellion'") and Los Angeles Times, September 7, 1979, p. 6 ("Western Officials Devise Strategy to Get U.S. Land"). Also see cover story ("The Angry West") and article ("Sagebrush Revolt") at pp. 38-39, NEWSWEEK, Sept. 17, 1979.) This Court's full

As a possible vehicle for clarification of the extent of local zoning powers on leased federal lands and resolution of the delicate issues which arise in accommodating federal and state interests in such areas, this case has already generated a significant amount of national interest. Indicative of such interest and the national importance of the issues involved are the facts that

**the case has been selected as the focus of discussion of a national panel presentation on "Local Regulation of Private Uses on Federal Lands" by the American Bar

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11/ (Continued)

consideration of the broad implications of the Gulf decision at this time, and reaffirmation of its earlier decisions refusing to find preemption of traditional local police powers on federal lands absent unequivocal evidence of Congressional intent to preempt, may go far to lessen the concerns prompting such incipient "rebellions."

Association and the American Law Institute,12/

**the case will be extensively treated (and criticized) in a note on the subject of local controls over energy development on federal lands currently scheduled for publication between November, 1979, and February, 1980, in Volume 32 of the Stanford Law Review,13/ and

**even the unreported decision of the District Court in this case was immediately seized and brought to national attention through citation and discussion (albeit inaccurate) by state courts

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12/ Presented at the fourth annual ALI-ABA Course of Study on "Land Use Litigation: Critical Issues for Attorneys, Developers and Public Officials" in October, 1979, in Philadelphia, Pennsylvania. See ALI-ABA CLE REVIEW, VOL. 10, NO. 29 (JULY 20, 1979).

13/ The preliminary draft and tentative publication date of this article have been provided to Ventura County by the Editorial Offices of the Stanford Law Review, Stanford University, California.

groping for guidance in accommodating the concepts of local regulatory powers over private parties with public land ownership.[14/]

II

THE DECISION BELOW IS INCORRECT.

It is, of course, not just the recognized national interest and impacts but also the obvious errors and omissions of the lower court's opinion which warrant a full briefing and consideration of the issues in this Court in order to serve "the policy underlying [28 U.S.C.] § 1254(2) [of] ensuring that state laws are not erroneously invalidated . . . ."[15/] Such errors and

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14/ See, e.g., inaccurate summary of Gulf case in State ex rel. Cox v. Hibbard, (Ore. Ct. App. 1977) 570 P.2d 1190, 1195. Also note reference to pendency of Gulf case following criticism of Kleppe v. New Mexico (1976) 426 U.S. 529 in Engdahl, Some Observations on State and Federal Control of Natural Resources (1978) 15 HOUSTON L. REV. 1201, 1211.

15/ City of New Orleans v. Dukes (1976) 427 U.S. 297, 302.

omissions, which can be discussed only briefly herein, demonstrate the obvious desirability of further consideration before the Gulf decision can be allowed to stand as precedent on the subject of local zoning authority over private lessees of federally-owned lands.

This Court has long emphasized the necessity for judicial restraint in finding federal preemption of traditional local police powers absent a clear and unequivocal manifestation of Congressional preemptive intent.[16/] Yet the lower court has found an implied preemption of the historic local police power of zoning as to private lessees of federally-owned national forest lands despite explicit Congressional disavowal of any preemptive intent in

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16/ Rice v. Santa Fe Elevator Corp. (1947) 331 U.S. 218, 230. Also see New York State Department of Social Services v. Dublino (1973) 413 U.S. 405; Huron Portland Cement Co. v. Detroit (1960) 362 U.S. 440; Schwartz v. Texas (1952) 344 U.S. 199, 202-203; Penn Dairies v. Milk Control Commission (1943) 318 U.S. 261; Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Bd. (1942) 315 U.S. 740.

both the national forest legislation (16 U.S.C. §§ 471 et seq.) and the Mineral Lands Leasing Act [of 1920] (30 U.S.C. §§ 181 et seq.).[17/] Moreover, although this Court has stressed that preemption inquiries require consideration of the relationship between state and federal laws "not merely as they are written" but "as they are interpreted and applied,"[18/] the lower court has completely neglected to consider the undisputed history of past successful application of the very zoning ordinances at issue in this case to private lessees of federally-owned national forest lands.[19/] How the lower court is able to find the existence of an "impermissibl[e] conflict" between the local

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17/ See 16 U.S.C. § 480 and 30 U.S.C. § 189 [pp. A-47 and A-49, App.] and this Court's earlier recognition of the non-preemptive intent of such sections in Wilson v. Cook (1946) 327 U.S. 474 and Mid-Northern Oil Co. v. Montana (1925) 268 U.S. 45, respectively.

18/ Jones v. Rath Packing Co. (1977) 430 U.S. 519, 526.

19/ See portion of record reprinted at pp. A-62 through A-72, App.

ordinances and the Mineral Lands Leasing Act [of 1920][20/] when the only record before it was one of past application of the ordinances without the creation of any such conflict is left to surmise.

What is clear is that the lower court has determined that local zoning jursidiction has been impliedly preempted by enactment of the Mineral Lands Leasing Act [of 1920]. To this extent, the opinion below completely overlooks, and conflicts with, this Court's earlier decision in Mid-Northern Oil Co. v. Montana (1925) 268 U.S. 45, that Congress has expressly consented in 30 U.S.C. § 189 to the states' continued exercise of their rights on lands leased under the Mineral Lands Leasing Act [of 1920.][21/]

20/ Opinion below at p. A-7, App.

21/ The lower court's decision is also contrary to the theme of numerous other federal court decisions recognizing that there is no compelling reason to immunize from local jurisdiction those private individuals and corporations which may choose to harvest natural resources on federal lands (Oklahoma Tax Commission v. Texas Co. (1949) 336 U.S.

Regarding the savings provisions of 30 U.S.C. § 189 directing that the Mineral Lands Leasing Act not be "construed or held to affect the rights of the States or other local authority to exercise any rights which they may have," the lower court has dismissed this proviso with the cryptic observation that it "cannot give authority to the state which it does not already possess." [P. A-15, App.] If this observation is meant to suggest that local governments did not already possess traditional police powers of zoning prior to enactment of the Mineral Lands Leasing Act

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21/ (Continued)

342; Wilson v. Cook (1946) 327 U.S. 474; International Paper Co. v. County of Siskiyou (9th Cir. 1974) 515 F.2d 285) and of various state court decisions that the mere status of being a lessee of either federal or state lands does not allow one to disregard local building and zoning regulations (Dupuis v. Submarine Base Credit Union, Inc. (Conn. 1976) 365 A.2d 1093; Youngstown Cart. Co. v. North Point Peninsula, Etc. (Md. Ct. App. 1975) 332 A.2d 718; People v. Vendome Service, Inc. (N.Y. Ct. App. 1940) 31 N.E.2d 508).

[of 1920], it is clearly in error.22/ On the other hand, if the court's observation is meant to imply that Congress did not intend by enactment of § 189 to allow the exercise of any state or local power, no matter how venerable, which might "interfere" with private uses of federal lands, it is in direct (and inexplicable) conflict with the legislative history of § 189--a history which was cited to, but never even commented upon by, the court below.23/

22/ The right of local governments to enact and enforce zoning laws within their boundaries is one which, as recognized by this Court in Village of Euclid v. Ambler Realty Co. (1926) 272 U.S. 365, 386, has been exercised at least since the turn of the century.

23/ With reasoning which is virtually identical to that contained in the lower court's conclusion that Ventura County cannot be allowed to apply its local ordinances, Congressional opponents of the Mineral Lands Leasing Act proviso saving local jurisdiction had argued that the proviso (§ 189) could "mak[e] it impossible for the Federal Government to do business respecting its own land with those with whom it has chosen to do business. . . . The States should not be permitted to enact laws that will embarrass the Government in its own use of

The decision below apparently rests upon two basic premises: (1) That the existence of extensive regulations issued by federal administrative agencies to govern the conduct of federal lessees supports a finding of implied preemption through enactment of the Mineral Lands Leasing Act [of 1920], and (2) that the requirement that Gulf obtain a county conditional use permit impermissibly creates "a local veto power" [p. A-16,

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23/ (Continued)

its property or that will interfere with private parties to whom it grants rights or privileges." [Representative McLaughlin, 58 Cong. Rec. (Oct. 28, 1919) at p. 7647.] Yet, in the face of this express invitation to preempt local regulatory authority over private lessees on federally-owned lands, the House of Representatives refused by a majority vote of approximately 80 percent to delete the subject proviso when debating enactment of the Mineral Lands Leasing Act [of 1920]. [58 Cong. Rec. (Oct. 28, 1919) at p. 7647.] Discussion of such legislative history (which can hardly be said to support the conclusion that local zoning jurisdiction has been preempted through enactment of the Mineral Lands Leasing Act) is conspicuously absent from the opinion below.

App.] and must, therefore, eliminate the applicability of Ventura County's zoning ordinances in their entirety.

As to the first of these premises, it must be noted that no action of federal administrative agencies, no matter how "extensive," can supply a missing Congressional intent to preempt. In the very same section in which it authorized the issuance of administrative regulations, Congress specifically provided that nothing in the Mineral Lands Leasing Act "shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have" (30 U.S.C. § 189), and no regulations issued by administrative agencies may be contrary to this provision or broaden the effect of the Act.24/

As to the second of these premises, it ignores the undisputed historical fact that the local ordinances have

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24/ West v. United States (D.C. Cir. 1929) 30 F.2d 739, 740; Texas Oil & Gas Corp. v. Phillips Petroleum Co. (W.D. Okla. 1967) 277 F.Supp. 366, 370, aff'd (10th Cir. 1969) 406 F.2d 1303, cert. den. (1969) 396 U.S. 829.

never been applied in past decades so as to "veto"[25] any federally approved activities and it fails to suggest or demonstrate why all portions of the zoning ordinance must fall simply because one requirement (permit issuance) cannot be tolerated. Why, for example, must the local ordinance provisions

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25/ The lower court's endorsement of the "catch 22" reasoning that, even though its ordinances allow oil drilling, the County is seeking to exercise a veto power when it requests injunctive relief against one who chooses to ignore those ordinances [p. A-11, App.] leaves the County in a completely helpless posture, and has led to a premature preemption decision. "[C]onflict is the touchstone of pre-emption." San Diego Building Trades Council, Etc. v. Garmon (1959) 359 U.S. 236, 250 (concurring opinion of Justice Harlan). Unless and until Gulf has applied for, and been denied, a County use permit, it is both unnecessary and premature to purport to find any ouster of local jurisdiction. (Note, e.g., the court's wise refusal to be drawn into a premature preemption decision by speculation as to whether a state permit (which had not been sought) "might" later be denied in State ex rel. Andrus v. Click (Ida. 1976) 554 P.2d 969, 975 fn. 3.)

which require noise reduction devices on all oil drilling rigs within 500 feet of private residences [§ 8163-14.1, p. A-55, App.] and the fencing of waste sumps [§ 8163-14.5, p. A-57, App.] not be applicable to those drilling on federal lands adjacent to private residences?

Although the opinion below relies upon the existence of "extensive" federal regulations to show that there has been an implied preemption, one searches in vain in such opinion for citation of any particular federal regulations which are allegedly in direct and irreconcilable conflict with any particular Ventura County zoning ordinance requirements. In fact, it is clear in the record below that the intent of the federal administrative regulations referenced by the lower court is merely to control the conduct of particular drilling operations and subsequent cleanup procedures so as to protect and restore those portions of the national forest which are used for such operations. There is no mention of, or protective federal regulation regarding, the effects of noise, dust,

odor, traffic, attractive nuisances and other incidents of drilling upon the numerous occupied private residences located in the vicinity of the Gulf drillsite. Such concerns are only addressed by Ventura County's zoning ordinances which are designed, inter alia, "[t]o assure . . . compatibility of . . . the particular use . . . [with other] uses of property within the zone and the general area," and to "assure that the use will not be or become detrimental to the public interest, health, safety, convenience, or the general welfare." [§§ 8163-3.1 et seq., p. A-54, App.]

The different points of emphasis of these federal and county regulations (the former being concerned with protection of the land per se and the latter being concerned with protection of citizens and other land uses in the vicinity) serve to indicate why there has not been in the past, and need not be in the future, any "conflict" through application of Ventura County's zoning

ordinances to private entrepreneurs engaged in operations on federal lands. They also indicate, however, the distressing situation which has been created by the lower court's determination that local zoning jursidiction is preempted in this case. For it is clear that the federal mineral leasing legislation does not concern itself with the protection of other citizens and land uses in the vicinity of drilling sites; if the County cannot do so, such protection is completely lacking.[26/]

26/ The lower court's assurance that the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 et seq.) mandates consideration of local impacts [p. A-15, App.] provides little solace. Although NEPA can ensure that a report is prepared regarding environmental impacts of the proposed activity, the conditions which are imposed upon the activity under the Mineral Lands Leasing Act are neither designed nor intended to lessen whatever impacts there may be on adjacent private lands and landowners, but are merely directed toward preservation of the particular piece of federal land being used. A report detailing the environmental impacts adjacent private lands will suffer is meaningless in the absence of conditions designed to mitigate such impacts--conditions which have

CONCLUSION

As noted above, the specific reservations of local jurisdiction in, and the explicit legislative history of the debates preceding, the Congressional enactments involved in this case must, at the very least, raise serious doubts as to whether Congress could be said to have intended to override local zoning jurisdiction upon the 187 million acres of national forests which have been established throughout the United States and upon the additional millions of acres of federal lands which are available for private use under the

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26/ (continued)

heretofore been fashioned and enforced through application of the County's zoning ordinances. (The lower court's casual reference to NEPA as ameliorating its conclusion that local controls have been preempted becomes doubly ironic when it is noted that Congress has expressly directed that the "primary responsibility for implementing" the environmental protection policy expressed therein "rests with State and local governments." 42 U.S.C. § 4371(b)(2).)

Mineral Lands Leasing Act. In its willingness to resolve any and all such doubts in favor of nullification of traditional and essential local police powers of zoning, the opinion below disregards legislative language, local history and judicial precedent.

The unfortunate decision which has been rendered below will have significant consequences for federal-state relationships in an area encompassing almost one-third of this nation's land mass. The nationwide interest already generated by this case during its passage through the courts below [see pp. 16-18, supra] and the opportunity which it presents for clarification of crucial constitutional issues in the presently turbulent area of intergovernmental relations on federally-owned lands [see p. 15, fn. 11, supra] cogently demonstrate the need for this Court's plenary review and guidance.

For the above reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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